S.B. CIVIL WRIT PETITION NO.346/1996

Executive Engineer, PWD, National High Way Division, Barmer & Anr.
Vs.
Bhera Ram & Anr.

Date of order :: 04.12.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr.S.N. Tiwari, Dy. Govt. Advocate.
Mr.H.S. Sidhu, for the respondent No.1.

Heard learned counsel for the parties.

In this petition, the petitioner-department is challenging the validity of the award dated 10th March, 1995 passed by learned Judge, Labour Court, Jodhpur in favour of respondent-workman whereby his termination dated 01st July, 1989 was set aside and he was ordered to be reinstated in service with full back wages.

It is submitted by learned counsel for the respondent-workman that while disposing of the stay application filed alongwith the petition the award to the extent of back wages was stayed and the respondent-workman was reinstated in service on 06th June, 1996 by the petitioner-department and now respondent-workman has been declared semi-permanent so also permanent.

Learned counsel for the petitioner-department is not disputing the above position but learned counsel for the petitioners vehemently argued that the award passed by the learned Judge, Labour Court, Jodhpur is totally illegal because respondent-workman has not completed 240 days in a preceding calender year. He remained absent voluntarily, therefore, there is no question for non-compliance of provisions of Section 25-F of the Industrial Disputes Act, 1947.

On the other hand, learned counsel for the respondent-workman vehemently argued that learned Judge, Labour Court, Jodhpur after considering the entire oral and documentary evidence has rightly arrived at with the finding that respondent-workman has completed 240 days and provisions of Section 25-F of the Industrial Disputes Act, 1947 were not complied with by the petitioner-department at the time of termination.

I have perused the award impugned dated 10th March, 1995 and considered the rival submissions advanced by both the parties.

In this petition, the finding of fact with regard to total days of working of respondent-workman is based on cogent evidence and this finding of fact arrived at by learned Labour Court

does not require any interference by this Court, so also while exercising power under Article 226 and 227 of the Constitution of India this Court cannot sit as an appellate authority to re-appreciate the evidence considered by the learned Judge, Labour Court, Jodhpur.

In these circumstances, no interference with regard to finding of non-compliance of Section 25-F of the Industrial Dispute Act, 1947 is required. However, the back wages awarded to the respondent-workman from 01st July, 1989 to the date of award which is 10th March, 1995 is not proper because during this period respondent-workman has not performed any work in the department. However, respondent-workman will be entitled for continuity of service from the date of his appointment.

In these circumstances the respondent-workman shall not be entitled for back wages w.e.f. 01st July, 1989 to 10th March, 1995 and he is entitled for wages from the date of award only.

With the aforesaid modification in the award, the writ petition is disposed of.

[GOPAL KRISHAN VYAS],J.

A.K. Chouhan/-